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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,205	02/09/2004	Alan D. Baldasari	006280.00003	6751

22907 7590 06/29/2005

BANNER & WITCOFF  
 1001 G STREET N W  
 SUITE 1100  
 WASHINGTON, DC 20001

EXAMINER

EPPS, TODD MICHAEL

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/773,205	<b>Applicant(s)</b> BALDASARI, ALAN D.	
	<b>Examiner</b> Todd M. Epps	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-15 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 2-4, and 16-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/9/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

This is the first Office Action for serial number 10/773205, Break-away Basketball Goal System, filed on February 9, 2004.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 7-10, 12, 14, and 18-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-14 of U.S. Patent No. 6,848,661. Although the conflicting claims are not identical, they are not patentably distinct from each other because;

'661 patent discloses a base, a neck movably coupled to the base extending a horizontal distance from the base, a backboard attached to a distal end of the neck, and a shock-absorbing mechanism for absorbing substantially downward shocks to the neck by permitting movement of the neck from an original position and returning the neck to the original position; a shock absorber coupled to the base, and a cable connecting the

Art Unit: 3632

shock absorber to the neck; the backboard being disposed a horizontal distance of 4 feet to 12 feet, 5 feet to 7 feet, and 9 feet to 11 feet from the base; the base to be permanently affixed to a horizontal playing surface; the basketball goal system is portable and the base is movable with respect to the ground; the backboard being rotatably attached to the neck; a rim coupled to the backboard, the rim being pivotable with the backboard about an axis for orienting the rim in a substantially horizontal position.

Claims 11, and 13 are rejected under 35 U.S.C. 103(a) as being obvious over claims 1-14 of U.S. Patent No. 6,848,661 B2 in view of U.S. Patent No. 5,098,093 of Dupre.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29,

Art Unit: 3632

1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

The claims fail to disclose the base to be fixedly attached to a roof, a wall, and a vertical support. Attention is directed to the Dupre reference, which teaches the base to be fixedly attached to a roof, a wall, and a vertical support. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have adjustable basketball goal system and mounting method by U.S. Patent No. 6,848,661 B2 with roof mounting frame by Dupre, wherein doing so would provide thereof ease to jump and play ball without hitting a pole or a tree.

Claim 20 is rejected under 35 U.S.C. 103(a) as being obvious over claims 1-14 of U.S. Patent No. 6,848,661 B2 in view of U.S. Patent No. 5,133,547 of Pardi.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and

Art Unit: 3632

reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

The claim fails to disclose a mounting post attached to the base, a neck movably attached to the mounting post, a housing retaining the shock-absorber, the housing defining a channel and a slide attached to the shock absorber. Attention is directed to the Pardi reference, which teaches a mounting post attached to the base, a neck movably attached to the mounting post, a housing retaining the shock-absorber, the housing defining a channel and a slide attached to the shock absorber. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have adjustable basketball goal system and mounting method by U.S. Patent No. 6,848,661 B2 with self-adjusting basketball goal by Pardi, wherein doing so would provide thereof ease to move the basketball goal.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, 10, 12, 15, and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,133,547 to Pardi. Pardi teaches a base (12), a neck (24) movably coupled to the base (12) extending a horizontal distance from the base, a backboard (34) attached to a distal end of the neck (24), and a shock-absorbing mechanism (fig. 1) for absorbing substantially downward shocks to the neck by permitting movement of the neck (24) from an original position and returning the neck (24) to the original position.

Regarding claim 5, Pardi teaches a mounting post (46) extending between the base (12) and the neck (24), the mounting post (46) having a forward side oriented toward the backboard and an opposite rearward side, wherein the neck (24) is movably attached to the mounting post (46) and the shock-absorbing mechanism (62) is attached to the rearward side.

Regarding claim 6, Pardi teaches wherein the neck (24) is pivotally attached to the mounting post (46).

Regarding claim 10, Pardi teaches the base (12) adapted to be permanently affixed to a horizontal playing surface (fig. 1).

Regarding claim 12, Pardi teaches a basketball goal system, which is portable and the base is moveable with respect to the ground (fig. 1).

Regarding claim 15, Pardi teaches a base (12), a mounting post (46) attached to the base (12), a neck (24) rotatably attached to the mounting post (46), a backboard (34) attached to a distal end of the neck (24) and disposed a horizontal distance from

Art Unit: 3632

the base (12), and a shock absorbing mechanism (62) generally disposed on a rearward side of the mounting post (46) opposite the backboard (34), the shock-absorbing mechanism (62) configured for absorbing substantially downward shocks to the neck (24) by permitting movement of the neck from an original position.

Regarding claim 18, Pardi teaches a backboard (34) rotatably attached to the neck (24) to provide adjustment for irregularities in the plumb of a support to which the base (12) is attached.

Regarding claim 19, Pardi teaches a rim (38) coupled to the backboard (34), the rim (38) being pivotable with the backboard (34) about an axis for orienting the rim in a substantially horizontal position.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardi. Pardi fails to disclose the backboard disposed a horizontal distance of 4 feet to 12 feet, 5 feet to 7 feet, and 9 feet to 11 feet from the base. It would have been obvious to one ordinary skill in the art at the time the invention was made to have 4 feet to 12 feet, or 5 feet to 7 feet, or 9 feet to 11 feet from the base to the backboard, wherein doing so would provide thereof convenience to adjust the backboard to suit their playing height.



Art Unit: 3632

Claims 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardi in view of U.S. Patent number 5,098,093 to Dupre.

Pardi fails to disclose the base adapted to be fixedly attached to a roof. Attention is directed to the Dupre reference, which teaches the base adapted to be fixedly attached to a roof. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have adjusting basketball goal of Pardi with roof mounting frame by Dupre, wherein doing so would provide thereof ease to jump and play ball without hitting a pole.

Regarding claim 13, Pardi fails to disclose the base adapted to be generally affixed to a wall. Attention is directed to the Dupre reference, which teaches the base adapted to be generally affixed to a wall. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have adjusting basketball goal of Pardi with a wall by Dupre, wherein doing so would provide thereof ease to mount on it.

Regarding claim 14, Pardi fails to disclose the base adapted to be removably attached to a vertical support. Attention is directed to the Dupre reference, which teaches the base adapted to be removably attached to a vertical support. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have adjusting basketball goal of Pardi with a vertical support by Dupre, wherein doing so would provide thereof ease to mount on it.

***Allowable Subject Matter***

Claims 2-4, and 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim 2, the prior art fails to teach the shock-absorbing mechanism, which includes a shock absorber coupled to the base, and a cable connecting the shock absorber to the neck.

Regarding claims 3, and 4, the prior art fails to teach a housing retaining the shock- absorber, and a guide attached to the shock- absorber and connected to the cable.

Regarding claims 16, and 17, the prior art fails to teach the shock-absorbing mechanism including a shock absorber coupled to the mounting post, a cable connecting the shock absorber to the neck, a housing retaining the shock-absorber, and a guide attached to the shock absorber and connected to the cable.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent number 6,554,724 to Taylor

U.S. Patent number 6,296,583 to Tatar, Sr.

U.S. Patent number 5,816,955 to Nordgran

U.S. Patent number 5,685,790 to Vaught

U.S. Patent number 5,628,506 to Vaught

Art Unit: 3632

U.S. Patent number 4,934,696 to Jackan

U.S. Patent number 4,296,925 to Alston

U.S. Patent number 3,329,427 to Bearson

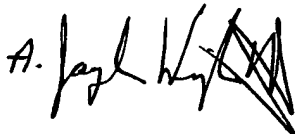
U.S. Patent number 3,023,001 to Gourdouze

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is 571-272-8282. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Todd M. Epps  
Patent Examiner  
Art Unit 3632  
June 23, 2005

A handwritten signature in black ink, appearing to read 'A. Epps', with a stylized flourish at the end.